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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 ELSIE COLLAZO, a single woman,) Case No. 2:13-cv-00892-JCC
12)
13 Plaintiff,) DEFENDANT'S MOTION FOR AWARD OF
14 vs.) SANCTIONS
15 BALBOA INSURANCE COMPANY, an) NOTE ON MOTION CALENDAR
16 Insurance Company) MARCH 7, 2014
17 Defendant.)
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19 **Relief Requested**

20 Defendant Balboa Insurance Co. ("Balboa") moves this Court for an order imposing
21 sanctions on Plaintiff and her counsel for repeatedly and willfully violating this Court's
22 Scheduling Order setting the discovery deadline for February 7, 2014.

23 **Statement of the Facts**

24 Plaintiff continues to serve subpoenas, note depositions and seek discovery after the
25 February 7, 2014 discovery deadline. The Scheduling Order entered on July 2, 2013 set a
26 February 7, 2014 discovery deadline. (Dkt. #11). Plaintiff has violated this Order and continues

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1 to violate this Order. Late in the workday on Monday, February 3, 2014, four days before the
 2 discovery deadline, Plaintiff demanded to take the depositions of four additional witnesses, only
 3 one of whom reside in Washington. Declaration of Robert S. May in support of Motion for
 4 Award of Sanctions (“Decl. May”) ¶ 3, Ex. 1. This was done knowing that Plaintiff was being
 5 deposed on February 7, 2014, which would leave only the next three days to produce three out-
 6 of-state and one in-state witness for deposition. Decl. May ¶ 3. On Wednesday, February 5,
 7 2014, Plaintiff served Balboa’s counsel with a Notice of Deposition of Glenn Gauthreaux
 8 commanding his appearance for a deposition on February 20, 2014, 13 days after the discovery
 9 deadline. Decl. May ¶ 4, Ex. 2. Balboa objected to Plaintiff’s attempt to conduct discovery in
 10 violation of the Scheduling Order. Decl. May ¶ 7, Ex. 4.

11 Plaintiff did not respond to Balboa’s objection except to write “let me know once you’ve
 12 learned of the witness’ availability.” Decl. May ¶ 7, Ex. 4. At 8:00 pm on February 13, 2014,
 13 almost a week after the discovery deadline, Plaintiff served Balboa’s local Independent Adjuster
 14 Dean Perryman with a subpoena in this case at his personal residence. Declaration of Dean
 15 Perryman ¶¶ 2-3. This subpoena, issued by Plaintiff February 6, 2014, the day before the
 16 discovery deadline, commanded Mr. Perryman’s appearance for deposition on March 3, 2014, 24
 17 days after the discovery deadline. Declaration of Dean Perryman ¶¶ 2-3.

18 On February 18, 2014, 11 days after the discovery deadline, Plaintiff unilaterally
 19 scheduled a CR 26(i) discovery conference to occur on February 19, 2014 at 2:00 p.m. Decl.
 20 May ¶ 8, Ex. 6. Balboa responded that it will not violate the Scheduling Order and cited to
 21 Plaintiff LCR 16(b)(1)-(4) and (m)(1) and (2). Decl. May ¶ 9, Ex. 7. Balboa emphasized to
 22 Plaintiff that “The parties are bound by the dates specified in the scheduling order ...the
 23 provisions of this rule will be strictly enforced.” LCR 16(b)(4) and (m)(1). Balboa asked
 24 Plaintiff twice to cease pursuing depositions and document discovery after February 7, 2014.
 25 Decl. May ¶ 9, Ex. 7. Plaintiff repeatedly refused. Decl. May ¶ 10 Ex. 8.

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1 Finally, on February 18, 2014, Balboa sent a letter to Plaintiff reminding Plaintiff that she
2 had ample opportunity to conduct discovery before the deadline, that Balboa had produced all
3 requested documents, yet Plaintiff threatened on several occasions to file a Motion to Compel
4 but failed to do so. Decl. May Ex. 9.

5 **Statement of the Issue**

6 Should this court issue sanctions against Plaintiff for ignoring the discovery deadline?

7 **Evidence Relied Upon**

8 Balboa relies upon the pleadings filed herein, the Declarations of Robert S. May and
9 Dean Perryman and attachments thereto.

10 **Legal Authority**

11 LCR 11(c) provides that “An attorney or party who without just cause fails to comply with
12 any of the Federal Rules of Civil or Criminal Procedure, these rules, or an order of the court, . . . or
13 who otherwise so multiplies or obstructs the proceedings in a case may, in addition to or in lieu of the
14 sanctions and penalties provided elsewhere in these rules, be required by the court to satisfy
15 personally such excess costs and may be subject to such other sanctions as the court may deem
16 appropriate.”

17 LCR 16 governs scheduling and case management. LCR 16(b)(1) provides: “The court shall
18 enter a written scheduling order . . . The scheduling order shall include, among other things,
19 deadlines for the completion of discovery. . . .”

20 As to the discovery deadline, LCR 16(b)(2) provides that “Interrogatories, requests for
21 admissions or production, etc., must be served sufficiently early that all responses are due before the
22 discovery deadline. Any motion to compel discovery shall also be filed and served on or before this
23 deadline or as directed by court order.”

24 The discovery deadline is binding under LCR 16(b)(4) and cannot be ignored by the parties
25 without the court’s consent: “The parties are bound by the dates specified in the scheduling order. A
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1 schedule may be modified only for good cause and with the judge's consent. Mere failure to
 2 complete discovery within the time allowed does not constitute good cause for an extension or
 3 continuance."

4 The discovery deadline is strictly enforced. "In order to accomplish effective pretrial
 5 procedures and to avoid wasting the time of the parties, counsel, and the court, the provisions of this
 6 rule will be strictly enforced. Sanctions and penalties for failure to comply are set forth in LCR 11
 7 and in the Federal Rules of Civil Procedure." LCR 16(m)(1).

8 **Conclusion**

9 Plaintiff has clearly ignored, and continues to ignore, the discovery deadline. Pursuant to
 10 LCR 11(c), an attorney who fails to comply with an order of the court may be required by the
 11 court to satisfy personally such excess costs and may be subject to such other sanctions and the
 12 court may deem appropriate. The discovery deadline in this action was February 7, 2014. This
 13 Court has not ruled on Plaintiff's Motion for Continuance (Dkt. # 15). The discovery deadline
 14 has not been extended. Plaintiff has violated this Court's order and continues to do so, as
 15 recently as February 17, 2014. Therefore, Balboa respectfully requests that this Court award
 16 sanctions against Plaintiff for the repeated and continued violations of the Scheduling Order.

17 DATED this 20th day of February, 2014.

18 SMITH FREED & EBERHARD, P.C.

19
 20 By: /s/ Robert S. May
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 22 Attorneys for Balboa Insurance Company
 23
 24
 25
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 20th day of February 2014, I served the foregoing pleading on:

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Of Attorneys for Plaintiff

Of Attorneys for Plaintiff

Of Attorneys for Plaintiff

X by electronic means through the Court's Case Management/Electronic Case Filing system on the date set forth above.

_____ by emailing to the address above and by mailing a full, true and correct copy thereof in a sealed, first-class postage-prepaid envelope, addressed to the attorney as shown above, the last-known office address of the attorney, and deposited with the United States Postal Service at Seattle, Washington on the date set forth above.

_____ by causing a full, true and correct copy thereof to be hand-delivered to the attorneys at the attorneys' last-known office address listed above on the date set forth above.

_____ by sending a full, true and correct copy thereof via overnight courier in a sealed, prepaid envelope, addressed to the attorney as shown above, the last-known office addresses of the attorneys, on the date set forth above.

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